

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2021-374-E - ORDER NO. 2022-115  
FEBRUARY 18, 2022

IN RE:	Application of Dominion Energy South	)	ORDER DENYING
	Carolina, Incorporated for Approval to Sell	)	APPROVAL FOR THE
	Real Property and for Waiver of Bid	)	TRANSFER AND SALE OF
	Requirement	)	PROPERTY AND WAIVER
		)	OF BID REQUIREMENT

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the application of Dominion Energy South Carolina, Incorporated (“DESC” or the “Company”) for approval to sell real property located in Charleston County, South Carolina (“Sand Dunes Property” or “Property”) and a waiver of the bid requirement. The Commission cannot grant the waiver of the competitive bid requirement; thus, the sale of the Property is not approved at this time.

**II. FACTS AND PROCEDURAL HISTORY**

DESC filed its application (“Application”) with the Commission on December 9, 2021, pursuant to Section 58-27-1300 of the South Carolina Code of Laws (2015) and Regulation 103-823 of the South Carolina Code of State Regulations (2012), seeking the Commission’s approval of the proposed sale. Additionally, DESC requested a waiver of the competitive bid requirement found in its Code of Conduct (Order No. 2021-358, dated May 14, 2021, issued in Docket No. 2019-386-E) for the sale of utility property in excess of one million dollars (\$1,000,000). DESC stated “[t]he purpose and intent of the Code of

Conduct is to protect against affiliate preferences and to ensure that the Company disposes of real property in a manner that promotes fair and equitable treatment of the parties to the transaction, potential bidders, and DESC's customers." (Application, pp. 2-3).

DESC entered into a Purchase Sale Agreement with SDC Island Resident Club, LLC (a Delaware limited liability company and affiliate of Beemok Capital, LLC), whereby the SDC Island Resident Club, LLC would purchase the Sand Dunes Property for nineteen million (\$19,000,000) dollars, subject to Commission approval. The Property is located on Sullivan's Island in Charleston County, South Carolina. DESC describes it as a 3.46-acre parcel of land, with improvements thereon, consisting of a 13,716 sq. ft. club house, four (4) picnic shelters, and a swimming pool.

In correspondence filed with the Commission on January 13, 2022, the South Carolina Office of Regulatory ("ORS") Staff notified the Commission it had reviewed DESC's Application and the waiver of the bid requirement. ORS also reviewed the requirements of South Carolina Code Ann. Section 58-27-1300 and Order No. 2021-358 regarding the sale of the Property. Ultimately, ORS concluded it "does not object to the Company's request to a waiver of the bid requirement as this is a method to expedite the sale process." (ORS correspondence of January 13, 2022, p. 2).

On January 13, 2022, this Docket came before the Commission at a business meeting. Chairman Justin T. Williams presided. The Commission issued a Directive, requesting more information from DESC. Specifically, the Commission sought:

First, clarification of the name "SDC Island Resident Club, LLC" is needed for the record. Furthermore, additional justification from Dominion Energy South Carolina, Inc. is needed regarding the market value of the Sand Dunes Property, and an independent appraisal, as well as the basis

for the waiver of the bid requirement mandated by the Code of Conduct Governing the Relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and Certain Other Affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E).

(Directive Order No. 2022-39.)

On February 3, 2022, the docket came back before the Commission. As requested, DESC provided a redacted appraisal of the Property to the Commission. DESC also submitted a letter with additional information about the prospective buyer and the basis for the waiver of the bid requirement. However, the Commission was unable to grant the waiver without more justification.

Without being able to grant a waiver of the bid requirement, the Commission could not approve the sale of the Sand Dunes Property to SDC Island Resident Club, LLC. Therefore, the Commission directed DESC to “obtain competitive bids for the sale of this property so as to obtain fair market value. Upon the conclusion of the bidding process, Dominion shall report back to the Commission and update its request for approval of the property transfer.”

### **III. APPLICABLE LAW**

The Commission has the authority to regulate and supervise the sale of utility property by electric utilities:

The Commission as provided for by the South Carolina Constitution and as vested with power and jurisdiction by the South Carolina General Assembly, performs the following general functions:

A. Regulation and supervision of the privately-owned electric utilities as to rates, charges, services, facilities, practices, accounting procedures, the purchase, sale or lease of utility property and the issuance of securities...

S.C. Code Ann. Regs. 103-810 (2012).

“The commission may, upon petition: (1) ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities . . . .” S.C. Code Ann. § 58-27-140 (2015). “Applications are submitted to the Commission for any authorization or permission which the Commission is empowered to grant under its statutory authority . . . .” S.C. Code Ann. Regs. 103-823.

Section 58-27-1300 of the South Carolina Code of Laws requires electric utilities to obtain approval from the Commission when they seek to "sell, assign, transfer, lease, consolidate, or merge its utility property" with a fair market value in excess of one million dollars (\$1,000,000). Section 58-27-1300 provides as follows:

No electrical utility, without the approval of the commission and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them, except that any electrical utility which has utility property, the fair market value of which is one million dollars or less, may sell, assign, transfer, lease, consolidate, or merge this property without prior approval of the commission. The commission may, at its discretion, hold a hearing on the request of an electrical utility to sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them. An electric utility seeking approval of a transfer under this provision shall serve a copy of the application on the Office of Regulatory Staff. For purposes of this section, "utility property" shall include property used and useful to provide customers with electric service and which has been properly included in the electric utility's rate base, including construction work in progress or property held to serve future customers. Utility property that has been transferred to nonutility accounts must continue to be treated as utility property under this provision for five years following the transfer.

S.C. Code Ann. § 58-27-1300.

Additionally, a Commission-approved Code of Conduct governs the relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and certain other affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E) (“Code of Conduct” or “Code”). The Code of Conduct contains reporting requirements for real property transactions, including specific requirements for the transfer of property and the bidding process.

The Code requires DESC to engage in a competitive bidding process for sales of real property with an appraised value in excess of \$1,000,000 (“Bid Requirement”). *See* Code of Conduct, Paragraphs III (C)(3)(b); IV(C)(1),(2)(a). Furthermore, “any utility land or real property transfers between DESC and . . . any other party, shall be made at Market Value.” *Id.*

Market value is defined as “the price at which property, goods, or services would change hands in an arm's-length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.” Code of Conduct, Paragraph I, Definitions. In order to determine prevailing market value, an appraisal takes place, and the appraised value must be determined by a state-certified independent appraiser. *See* Code of Conduct, Paragraph III (C)(3)(b), fn. 1. Despite having an appraisal, the Bid Requirement must still be met.

#### **IV. FINDINGS OF FACT**

1. The Commission has the authority to regulate and supervise the sale of utility property by an electric utility. DESC appropriately sought Commission approval of

the proposed sale of the property that is the subject of this request. DESC also provided a confidential appraisal to the Commission.

2. The Property has an appraised value in excess of one million dollars (\$1,000,000). (*See Confidential Appraisal.*)

3. DESC entered into a contract with SDC Island Resident Club, LLC, to sell the Property for nineteen million dollars (\$19,000,000). (*Application, p. 2.*)

4. DESC has not engaged in a competitive bidding process for the Property as of February 3, 2022, the date of the Commission's latest Directive in this docket.

## **V. CONCLUSIONS OF LAW**

1. The Commission has the power and jurisdiction to regulate and supervise the sale of utility property by DESC pursuant to South Carolina Code of State Regulations 103-810 (2012) and South Carolina Code of Laws section 58-27-1300 (2015).

2. A Code of Conduct governs the relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and certain other affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E).

3. The Code of Conduct contains reporting requirements for real property transactions, including specific requirements for the transfer of property and the bidding process. *See Code of Conduct, Order No. 2021-358, Paragraphs III (C)(3)(b); IV(C)(1),(2)(a).*

4. The Commission denies DESC's request for a waiver of the competitive bidding process, which is required for sales of real property with an appraised value in excess of one million dollars (\$1,000,000). (*Order No. 2021-358.*)

5. The Commission denies approval of the sale of the Property as set forth in this application pursuant to the Code of Conduct. (Order No. 2021-358.)

**VI. ORDERING PARAGRAPHS**

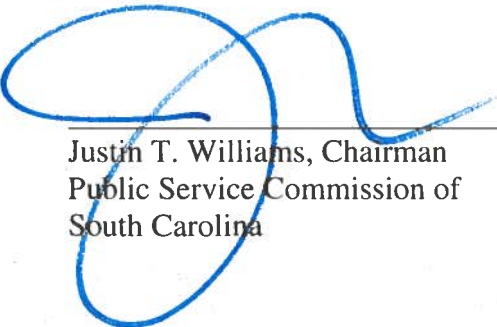
**IT IS THEREFORE ORDERED:**

1. The Application of Dominion Energy South Carolina, Incorporated seeking Commission approval of the transfer and sale of property located at Sullivan's Island in Charleston, South Carolina, as set forth in this docket, is denied.

2. The request of Dominion Energy South Carolina, Incorporated for a waiver of the competitive bidding process required by the Code of Conduct, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E), as set forth in this docket, is denied.

3. Dominion Energy South Carolina, Incorporated is further ordered to obtain competitive bids for the sale of this Property so as to be in compliance with Commission Order No. 2021-358, and all related orders concerning transfers of utility property.

**BY ORDER OF THE COMMISSION:**



Justin T. Williams, Chairman  
Public Service Commission of  
South Carolina